IN THE

SUPREME COURT OF THE UNITED STATES

December Term, 1978

No. **78-859**

ARTHUR V. GRASECK, JR.,
Plaintiff-Petitioner,

-against-

ANGELO MAUCERI, Individually and as Administrative Judge of the District Court of Suffolk County; EDWARD U. GREEN, JR., Individually and as a Judge of the District Court of Suffolk County,
Defendants,

JOHN F. MIDDLEMISS, JR., Individually and as Attorney-in-Charge, Legal Aid Society of Suffolk County, New York,
Defendant-Respondent,

RALPH COSTELLO, Individually and as Attorney-in-Charge of the District Court Bureau of the Criminal Division of the Legal Aid Society of Suffolk County, New York,
Defendant,

LEGAL AID SOCIETY of Suffolk County, New York,
Defendant-Respondent.

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

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CONTENTS

TABLE OF AUTHORITIES

Cases — Page

Constitutional And Statutory Provisions

TABLE OF AUTHORITIES

Other Authorities

Miscellaneous References

TABLE OF AUTHORITIES

Miscellaneous References

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PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

To The Honorable Chief Justice and Associate Justices of the Supreme Court of the United States:

The petitioner, Arthur V. Graseck, Jr., prays that a Writ of Certiorari issue to review a judgment of the United States Court of Appeals for the Second Circuit filed and entered August 7, 1978 (unreported) (Pet. App. A, pp. 1-38) [1/] affirming a judgment of the United States District Court for the Eastern District of New York (The Honorable Jacob Mishler, Ch. J.) filed October 31, 1977 (unreported) (Pet. App. B, pp. 1-55) dismissing petitioner's complaint, alleging petitioner's improper firing by the respondents as an attorney for the Legal Aid Society of Suffolk County, against John

1/ The Appendices are separately presented in a companion volume and cited as "Pet. App."

F. Middlemiss, Jr. and the Legal Aid Society of Suffolk County, New York.

OPINIONS BELOW

The opinion of the Court of Appeals appears in Pet. App. A., pp. 1-38 (unreported).

The opinion of the United States District Court for the Eastern District of New York appears in Pet. App. B., pp. 1-55 (unreported).

JURISDICTION

The United States Court of Appeals for the Second Circuit, on August 7, 1970, affirmed that portion of a dismissal of an action, brought under Title 42 U. S. C. 1983 and Title 28 U. S. C. 1343 (3), by the United States District Court for the Eastern District of New York, Jacob Mishler, Chief Judge, hold-

ing that appellees-respondents had not acted under color of state law and that therefore the Court lacked subject matter jurisdiction. The judgment of the Court of Appeals was entered on August 7, 1978. (Pet. App. C., pp. 1(a)-1(b))

The jurisdiction of this Court is sought to be invoked under Title 28 U. S. C. 1254 (1).

QUESTIONS PRESENTED

1. Whether the United States Court of Appeals correctly determined that respondents Middlemiss and Legal Aid Society did not engage in State action by dismissing petitioner even though the Court:

(a) failed to address the symbiotic nature of the relationship between Legal Aid and Suffolk County;

(b) did not consider the sig-

nificance of Legal Aid's status as virtually the sole source of legal representation for indigent criminal defendants in Suffolk County, a role it occupied as a result of being exclusively funded by the County;

(c) called for a higher degree of state involvement in this suit, than it otherwise would have required, on the presumption that this case did not involve allegations of racial discrimination, despite recent judicial criticism of preferential treatment based on an individual's status as a member of a racial minority; and

(d) in any event, ignored the racial implications of this suit.

2. Whether the failure of the Court of Appeals to find state action has re-

sulted in a violation of Sixth Amendment rights of indigent defendants in that it sanctioned the imposition of a penalty on petitioner for asserting remedies on behalf of poor criminal defendants which retained attorneys could have asserted for wealthy clients with impunity.

3. Whether the failure of the Court of Appeals to find state action infringes on the First Amendment rights of petitioner by sanctioning the imposition of a penalty for zealous representation of indigent clients, pursuant to the requirements of the Sixth Amendment and the Code of Professional Responsibility.

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

The First Amendment to the United States Constitution:

> "Congress shall make no law ... abriding the freedom of speech ...."

The Sixth Amendment to the United States Constitution:

> "In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the State and district wherein the crime shall have been committed, which district shall have been previously ascertained by law, and to be informed of the nature and cause of the accusation; to be confronted with the witnesses against him; to have compulsory process for obtaining witnesses in his favor, and to have the Assistance of Counsel for his defence."

The Fourteenth Amendment to the United

States Constitution:

" ... nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws."

Title 42 United States Code, Section 1983:

"Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory, subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an

action at law, suit in equity, or other proper proceeding for redress."

Title 28 United States Code, Section 1343 (3):

"The district courts shall have original jurisdiction of any civil action authorized by law to be commenced by any person: ...(3) To redress the deprivation, under color of any state law, statute, ordinance, regulation, custom or usage, of any right, privilege or immunity secured by the Constitution of the United States or by any Act of Congress providing for equal rights of citizens or of all persons within the jurisdiction of the United States.."

New York County Law, Art. 18-B, Section 722 (McKinney Supp. 1977-78):

"The governing body of each county ... shall place in operation throughout the county ... a plan for providing counsel to persons charged with a crime ... who are financially unable to obtain counsel. Each plan shall also provide for investigative, expert and other services necessary for an adequate defense. The plan shall conform to one of the following:

1. Representation by a public defender ...

2. In criminal proceedings, representation by counsel furnished by a private legal aid bureau or society designated by the county ..., organized and operating to give legal assistance and representation to per-

sons charged with a crime within the ... county who are financially unable to obtain counsel ...

3. Representation by counsel furnished pursuant to a plan of a bar association ...

4. Representation according to a plan containing a combination of any of the foregoing ..."

STATEMENT OF THE CASE

Petitioner challenges his sudden summary dismissal from the Legal Aid Society of Suffolk County, without notice, as a submission to judicial pressure to have him removed. Review is sought of the judgment of the Court of Appeals which sanctioned that dismissal, rejecting contentions that it resulted in infringement of petitioner's and his

clients' constitutionally protected rights under the First and Sixth Amendments, respectively, and was violative of the due process clause of the Fourteenth Amendment.

This case concerns the policy question of whether respondent Society, and other such organizations, play an appropriate role in their dealings with indigent clients. The circumstances surrounding petitioner's discharge, which was an immediate response to judicial intervention, raise a question about a gross disparity between legal services provided the poor and the wealthy. It appears that an attorney is expected to be zealous on behalf of retained clients, but a mere agent of the judiciary in his dealings with powerless defendants, who do not pro-

vide his compensation.

Petitioner's dismissal was accomplished in response to confrontations between him and Judges Angelo Mauceri and Edward U. Green, Jr. of the District Court of Suffolk County. These encounters had resulted in petitioner's exclusion from Judge Green's chambers and courtroom and from the prisoners' detention area of the District Court, as detailed more fully below.

Neither prior to nor in the aftermath of his summary dismissal was petitioner accorded due process safeguards which would be available to private counsel who incurred the wrath of Judges and might fact Bar Association grievance committee proceedings. It is clear that such a professional body would reach a

determination only after the criticized conduct was thoroughly and fairly evaluated. Indeed, in the latter situation, the private counsel, even if he were found to have engaged in improper conduct, most probably would be penalized in a manner less severe than the summary discharge imposed on petitioner, as a result of judicial intervention in the affairs of respondent Legal Aid. The resulting difference in pressures experienced by assigned and retained counsel has an inevitable effect on the quality of representation afforded the poor: whereas a private lawyer must see himself as primarily a representative of his client and an advocate of the latter's interests, a legal aid lawyer is virtually compelled to perceive his role as that of a repre-

sentative of the Court, who must focus on judicial concerns, even though the client may be adversely affected.

This suit was initially heard by Judge Jack B. Weinstein of the United States District Court for the Eastern District of New York. A full trial was conducted during the week of November 22, 1976. After hearing all of the evidence pertaining to state involvement in the operation of the Legal Aid respondents' motion to dismiss for lack of jurisdiction [2/] "...find-

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2/ In reaching this decision, J. Weinstein declared:

"There's ample state action. All of the funds for this Legal Aid Society's activities come from the State. There's ample evidence that the Administrative Judge worked very closely with Legal Aid in resolving their problems, made applications for funds.

I don't see how there really could be any serious doubt on the facts that this is constitutionally state action.

(continued next page)

ing state action from the close working relationship between the District Court of Suffolk County and the Society." (Pet. App. A, p. 26)

After denying respondents' motion, Judge Weinstein recused himself on December 27, 1976 at their request. Thereafter, the case was reassigned to Chief Judge Jacob Mishler who, on February 14, 1977, denied petitioner's request that the case be decided on the record compiled before Judge Weinstein.

2/ cont'd

It's perfectly clear from the evidence in the case as well as from what is apparent on the basis of judicial notice that the District Court of Suffolk County could not have operated at all without the Legal Aid Society, and for purposes of this issue it seems to me that this must be considered state action." Trial Transcript at 269 (Weinstein trial) (November 26, 1976).

On May 31 and June 2, 1977, the matter was retried before Chief Judge Mishler.

Petitioner is a graduate of the Yale Law School (1963) who completed an L.L.M. degree in labor law at New York University Law School (1968) and has been admitted to practice in New York since 1964. He has been the recipient of such academic honors as membership in Phi Beta Kappa and selection as a Finalist in the Cardozo Moot Court Brief competition at Yale Law School.

He came to work for respondent Legal Aid, having had diverse experience as an associate with a private Manhattan law firm and a member of the staffs of public and quasi-public bodies. He was employed by the Legal Aid Society of Suffolk County from July, 1971 until October 13, 1972,

being assigned for most of that period at the Society's District Court Bureau in Hauppauge, Long Island. 3/

It is undisputed that incompetence never served as a basis for petitioner's dismissal. 4/ Indeed, the testimony of his former Legal Aid supervisor, E. Thomas Boyle, Esq., was to the effect that Graseck was an exceptionally dedicated and talented attorney, whom others relied on to handle particularly difficult cases. 5/

3/ See petitioner's resume at Addendum, pp. 9-11 -- pp. 284-85 of the 'Joint Appendix' prepared for the Court of Appeals. Hereinafter, figures preceded by A will refer to pages in the Joint Appendix.

4/ A171.

5/ The following exchange took place at the second trial between counsel and Boyle (A234):

"Q. You indicated that you assigned cer-

(continued next page)

The other principal actors in this suit are:

John F. Middlemiss, Jr. -- He has been at all times relevant, the Attorney-in-Charge of Suffolk Legal Aid. As head of Suffolk Legal Aid, he hired Graseck and, on October 13, 1972 fired him. The Society had received federal funds for

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5/ cont'd.

tain cases to Mr. Graseck to follow through, from start to finish; did those cases involve any particular subject matter?

A. Very often they would involve charges, misdemeanor assault cases, violations of harassment where the defendant's position was that the police had actually been the aggriever, and that these were simply charges of resisting arrest, which is another type of charge. These were simply trumped up charges to cover up for beatings that the defendant received at the hands of the police, and they are very, very difficult cases to handle in the District Court. These are one of the types that I would refer to him to get involved in."

some of its activities, which support was withdrawn during Middlemiss' tenure as Attorney-in-Charge, because of dissatisfaction with Legal Aid's view of its role and the conclusion that Society attorneys created bitterness in the client community by failing to adequately serve the poor. The report of the Office of Economic Opportunity appearing in the Addendum, pp. 1-8, is discussed more fully below.

Suffolk Legal Aid -- The Legal Aid Society of Suffolk County is a membership corporation under contract with the County of Suffolk to represent indigent criminal defendants in accordance with the County's obligation pursuant to Section 722 of the County Law of New York State. Since its inception in 1965, the Criminal Division

has been funded exclusively by the legislature of Suffolk County (Pet. App. A, p.22). The Society developed a close working relationship with the Suffolk County District Court, whereby Legal Aid was the beneficiary of numerous favors provided by the Administrative Judge of the District Court, who expected cooperation from respondent Middlemiss and his subordinates. One of the legal contentions raised by petitioner, and treated more fully infra, is the symbiotic relationship which existed between respondent Society and the County and its bearing on the state action issue.

Angelo Mauceri -- He is and was at all relevant times the duly appointed Administrative Judge of the District Court of Suffolk County, who was resentful of such

conduct by Legal Aid lawyers as moving to dismiss cases for failure to prosecute. Addendum, p. 31. It is now undisputed that with respect to the "pen incident" (discussed more fully below), Judge Mauceri issued an order barring petitioner from the courthouse detention cells and then communicated with defendant Middlemiss by telephone and in writing regarding the incident. Evidence has been presented showing that in that telephone conversation Judge Mauceri said to defendant Middlemiss, "You have got to get this guy [Graseck] out of my court." Pet. App. A, pp. 14,36.

The next day Arthur Graseck was dismissed. Mauceri initially denied any recollection of any communications with Middlemiss about Graseck on the day before

the latter's sudden discharge without notice. 6/

6/ The following exchange between counsel and Mauceri occurred at the first trial (A139-40):

"Q. ... have you ever communicated with Middlemiss before about a Legal Aid lawyer [other than Graseck]?

A. No. ...

Q. Judge Mauceri, you recall in your pre-trial deposition you told us you had no communication with Mr. Middlemiss concerning the October 12 [pen] incident?

A. Yes, I recall that ...

Q. How was ... [your memory] refreshed?

A. With my own counsel.

Q. I don't want to intrude on the privacy of the information.

A. As long as I don't waive the privilege. He showed me the letter and that's how I remembered it.

Q. In addition to your letter do you remember now making a telephone call to Mr. Middlemiss that day?

(continued next page)

In addition on November 7 and 9, 1972, articles about plaintiff's dismissal appeared in Newsday, a Long Island newspaper, attributing to Judge Mauceri unflattering remarks about Graseck. (Addendum, pp.12-25)

Edward U. Green, Jr. -- He is and was at all relevant times a duly elected Judge of the District Court of Suffolk County. It is undisputed that on or about October 10, 1972, Judge Green learned that petitioner had filed an affirmation in support of a motion relating to the case of People v. McElhiney which affirmation was in part critical of Judge Green's conduct of the

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6/ cont'd.

A. Yes, just about the same time.

Q. You thought it was necessary to notify Mr. Middlemiss both orally and in writing?

A. Yes.

case at an earlier stage. It is also uncontested that Judge Green became enraged over what had been set forth in the affirmation and summoned Graseck and his supervisor, at that time, Ralph Costello, into his chambers where he registered his displeasure. 7/

It is petitioner's contention, as detailed more fully below, that, at this meeting, Judge Green declared that he would no longer be permitted in the Judge's chambers or courtroom. Pet. App.,A, p. 11. Judge Green also reported the incident to Judge Mauceri. 8/ Three days later, petitioner was dismissed. Judge

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7/ A 156-59.

8/ A. 155.

Green has been the subject of a Special Grand Jury Report, of which the Court is requested to take judicial notice, as bearing on conduct similar to that which resulted in petitioner's discharge. 2/

E. Thomas (Tom) Boyle -- He was Attorney-in-Charge of the District Court Bureau from about October, 1971 to about August, 1972 and functioned as Graseck's immediate supervisor. A graduate of the University of Virginia Law School, Boyle was employed by respondent Legal Aid from the Fall of

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2/ Report of the Grand Jury ... County of Suffolk ... concerning:
"Misconduct, non-feasance or neglect in public office by a public servant as the basis for a recommendation of removal or disciplinary action..." Plaintiff's allegedly critical remakrs concerning Judge Green in the "McElhiney Affirmation" pale in comparison with the alleged conduct of Judge Green which was criticized by the Grand Jury.

1967 until December 1, 1972, advancing from the position of staff attorney to that of First Assistant, with responsibility for the entire Criminal Division.

After learning of petitioner's dismissal, Boyle unsuccessfully sought to have Middlemiss reconsider his decision. Shortly thereafter, in October, 1972, Boyle tendered his resignation from Suffolk Legal Aid in protest over the basis on which petitioner was fired. His resignation letter, appearing in Addendum, pp.26-29,28 provided, in pertinent part:
"It is apparent from my investigation that Mr. Graseck was discharged for incurring "judicial disfavor".

The record demonstrates that petitioner was fired for undertaking certain actions pursuant to his obligations under

the Code of Professional Responsibility and the Sixth Amendment. Moreover, the chronology of events renders inescapable the conclusion that the dismissal decision was actually motivated by pressure from state judges--and was a result of respondent Middlemiss' overreaction to communications from the judiciary.

Although it is undisputed that petitioner's dismissal was not premised on any single incident or reason, the closeness in time of the so-called 'pen incident' and the filing of the McElhiney affirmation with the dismissal make it clear that they were the triggering events. While respondents have claimed that other incidents, remote in time, involving encounters with Judges Green and Mauceri and others, played a role in the decision

to fire petitioner, he was never warned that these occurrences might place his job in jeopardy.[10] Instead, these incidents were belatedly resurrected at trial as a justification for petitioner's sudden dismissal, one day after Judge Mauceri wrote to and called respondent Middlemiss about the "pen incident".

A close examination of the two triggering incidents, which resulted in Graseck's discharge, reveals that the leadership of Legal Aid is more responsive to judicial pressure than to the needs of its clientele. It appears that the Society's County funding affects its view of what its role should be.

McElhiney Affirmation -- On or about

10/ A 88-89.

September 27, 1972, petitioner moved to dismiss for failure to prosecute the case of People v. McElhiney, a misdemeanor case pending in the District Court, with respect to which Judge Green played a significant role. In the affirmation it was pointed out that the case had been on the calendar on eight occasions, alleged that the prosecution's principal witness had repudicated his prior statement as coerced and false and that Judge Green had undertaken to speak for the Office of the District Attorney in offering an explanation for the prosecution's repeated lack of readiness for trial.[11]

When the Judge learned of the affirmation, on October 10, 1972, he, in his

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11/ See McElhiney Affirmation, A 273-77.

own words, "...was in a rage." Judge Green summoned petitioner and his immediate supervisor to his Chambers.[12] The record supports petitioner's contention that the import of Judge Green's unrecorded remarks was that petitioner was thenceforth banned from the Judge's chambers and courtroom.[13]

Although respondent Society argues that petitioner exercised poor judgment in filing this affirmation, that contention is rebutted by the eventual decision to grant the motion in support of which the McElhiney affirmation was filed, thereby relieving a Legal Aid client from the burden of a criminal

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12/ A 158-59.

13/ A 58.

charge which had been pending against him for a substantial period.[14] Moreover, the testimony of Middlemiss, at the first trial, reveals that he readily accepted Judge Green's point of view, admittedly formulated in a moment of "rage", without even being fully aware of the contents of the affirmation.[15]

Pen Incident -- It is undisputed that on October 12, 1972, following a trial in which petitioner appeared as defense counsel, he accompanied a defendant to the

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14/ None of the substantive allegations in the McElhiney affirmation was controverted by the Assistant District Attorney in his answering affidavit. A 308-09.

15/ The following exchange between counsel and Middlemiss, at the first trial, indicates that respondent Society viewed itself as an adjunct of the Court (A106-108):

"Q. Mr. Middlemiss, precisely what is so dreadful about that affirmation?

detention area and began to discuss with him the summation scheduled for later that day; that conversation was interrupted when the Suffolk County Police Department asked all non-detainees to leave the area so that they could perform an administrative function, that Graseck then provided defendant with paper and a ball point pen so that he could make notes for possible use during the summa-

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15/ cont'd.

A. I think it's wrong to call a judge a constant agent of the District Attorney's office.

Q. Does that affirmation call Judge Green a constant agent of the District ... [Attorney's] office?

A. I just viewed this action on his part as just one more thing that he had done ...

Q. Let's stick to the ... [McElhiney] affirmation ... Were you really concerned at the language that he used in that affirmation?

(continued next page)

tion, that the police subsequently discovered the pen in the defendant's possession, that Judge Mauceri was notified and promptly issued an order barring petitioner indefinitely from the holding pen; and that Judge Mauceri telephoned Middlemiss to inform him of the step he had taken and followed up the call with a formal letter. Pet. App. A, p. 14.

What Judge Mauceri said in his tele-

15/cont'd.

A. Yes.

Q. You really think it was a terrible thing to do?

A. Yes.

Q. You think it's incorrect for an attorney making a motion like that?

A. Yes, in that vein; yes.

Q. Is it possible, Mr. Middlemiss, what you were upset about was not the language but Judge Green's reaction to that language? (continued next page)

phone call to Middlemiss on October 12 is in dispute, but Tom Boyle testified that Middlemiss quoted Mauceri as having said, "You have got to get this guy[Graseck] out of my court." (Pet. App. A, pp. 14, 36). It is noteworthy that the Judge, in his follow-up letter of October 12, clearly indicated that he anticipated that petitioner would be removed by declaring that he hoped a pen incident would not be

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15/ cont'd.

A. No, it is not.

Q. This time you were upset about the actual language and not what the judge did about it?

A. I wasn't interested in what the judge did, I was interested in what was in that affidavit. ...

Q. Did you investigate the factual basis of that affirmation before you fired Mr. Graseck to find out whether it was a justifiable motion?

A. Under no circumstances would I think

repeated by Graseck "at any other location". (Addendum, p. 34)

It is undisputed that quite apart from Middlemiss' feelings about the propriety of petitioner's having left a pen with a detainee, the attorney in charge bottomed his dismissal decision on the fact that Judge Mauceri's order, barring petitioner from the holding pen, limited petitioner's ability to operate effectively in the arraignment part. (Pet.App.

15/ cont'd.

that was justified in putting it in there. If he felt that Judge Green was a constant agent of the D.A.'s office he should have brought it to the proper authorities.

Q. You continue to insist that's what the affidavit says in the face of the literal wording of the affidavit?

A. Yes."

Cf. Affirmation A 273-77.

A,pp.29,34-36) Clearly, Legal Aid made no attempt to challenge the propriety of the drastic step taken by Judge Mauceri, even though the order was made at the behest of the Suffolk County Police Department -- an agency with questionable motives given the fact that Graseck had been previously involved in cases involving clients who alleged police misconduct -- including a matter in which a Trial Judge implicitly found merit to a claim that the police administered a beating in the District Court holding pen.[16/]

Indeed, Middlemiss testified, upon examination by Judge Weinstein, that he was unaware of any written rule preventing attorneys from giving pens to prison-[16/]

A 51.

ers as a means of facilitating attorney-client communication. Nevertheless, he indicated that he felt the giving of the pen was a sufficiently serious act to warrant a dismissal.[17] In commenting on Middlemiss' testimony, Judge Weinstein stated:

> "I must say, I find this whole thing very strange. I know I would suppose if I was representing someone I would tell him, write out what you think or give me a list of names."[17a]

Later, during the course of the first trial, Judge Mauceri conceded that, prior to being notified by the police of Graseck's actions in the holding area, he was also unaware of any prohibition

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17/ A 90-91.

17a/ A 97-98.

against attorneys giving pens to clients.[18] Yet, he, nonetheless, felt that the extraordinary steps, of barring petitioner from the detention cells and notifying Middlemiss both orally and in writing of his actions,[19] were necessary. Moreover, J. Mauceri didn't feel that petitioner's lack of knowledge of any such rule--if it existed--should have been a relevant factor in arriving at his decision as to how to deal with the complaint by police.[20]

18/ A 132-33.

19/ A 132, 139; Mauceri testified that he has never communicated with Legal Aid about an attorney other than petitioner.

20/ The following exchange between Mauceri and counsel, at the first trial, is indicative of Mauceri's inability to justify his order barring petitioner from the

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Although petitioner consistently, and without contradiction, declared that he received no prior notice of any rule forbidding attorneys from leaving pens with detainees, a key factual determination of the District Court was that oral admonishments by the security force personnel in the detention area had been given. (Pet. App. B, p. 17) The Court of

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20/ cont'd.

the holding area (A 132-34):

"Q. You had personally promulgated any rule or procedure with regard to writing implements in the detention pen?

A. No.

Q. Prior to your conversation with Patrolman Mitchell [who reported the pen incident to Mauceri] were you aware of that?

A. Allowing them to have pens?

Q. Yes.

A. I wasn't aware. ... No I wasn't aware

Appeals, however, declined to adopt this factual determination. (Pet. App.

20/ cont'd.

of any rule whether they could give it or not give it.

Q. Do you know whether Mr. Graseck was aware of such a rule?

A. I wouldn't know.

Q. Didn't you think that was a relevant consideration before you excused him from the detention pen whether he was knowingly violating the rule?

A. Are you asking me do I think that? No, he was violating the rule according to the police of the detention pen. The(y) felt it was a - - since it was an unusual agreement we had that's why we barred him from going in.

Q. So you didn't think it was relevant whether Mr. Graseck knew or didn't know that he was violating a police rule?

A. True. ...

Q. Did you ask him, did you conduct any investigation to determine whether other institutions, other detention pens or similar institutions had similar rules concerning pens?

A. No, I didn't."

21/ A, p. 13-14.

In short, the record amply supports petitioner's contention that Middlemiss made no effort to challenge the drastic measures taken by a judicial officer. The attorney in charge did not ask any questions concerning Mauceri's order, even though it was obvious that the factual basis for it was, to say the least, questionable. Moreover, the appropriateness of any such alleged rule was not self evident and Middlemiss' failure to inquire into or seek to delineate the

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21/ The Court of Appeals stated:

"Whether the security personnel had previously given instructions never to leave such instruments with detainees because of their potential use as weapons is in dispute."

Petitioner's testimony, in this regard, was disputed only by an assertion contained in the trial Court's memorandum decision.

extent of any restriction on the right of his representatives to freely communicate with Legal Aid clients, who were pre-trial detainees, is noteworthy. See Judge Weinstein's comments, supra.22/

22/ The following exchange between Mauceri and counsel is also noteworthy (A 142):

"Q. Did Mr. Middlemiss ask you in any way what the basis of this rule barring pens was?

A. No.

Q. Did he question you in any way concerning the facts of Mr. Graseck's attempting to give a pen to his clients?

A. You mean why Mr. Graseck gave it to him or the fact he left it with him?

Q. No, why he left it with him?

A. No.

Q. Did you tell Mr. Middlemiss how long you were going to exclude Mr. Graseck from the pen for?

A. No."

Clearly, the attorney in charge regarded assuring necessary lawyer-client communication as far less important than immediate responsiveness to a judicial directive, irrespective of the peculiar circumstances in which it was issued and any possible adverse effect it might have on respondent Society's ability to protect the Sixth Amendment rights of its clients. The chronology of events clearly demonstrates that the discharge decision was a response to extraordinary judicial communications to respondent Society.[23/]

On November 15, 1972, following the appearance of charges in Newsday that the Judiciary had interfered with the work of

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23/ A 85.

Legal Aid, the Personnel Committee of respondent Society convened to discuss petitioner's dismissal. Immediately prior to the meeting, Middlemiss privately met with the Committee over lunch.[24/]

Clearly, the Committee meeting was not called to specifically review and evaluate dismissal reasons.[25/]

24/ The then President of Suffolk Legal Aid, who was also a member of the personnel committee, Howard M. Finkelstein, testified that at the luncheon (A 164-66):

> "... the principal topic was how we were going to run the meeting. We really never had this kind of a meeting to review an administrative decision like this, and we talked about that .../and we discussed the affair, too, the so-called Graseck affair ... we decided that we would hold an informal meeting in the sense we would come to order... we weren't quite sure how to -- how to discuss all of the professional qualifications and activities of Mr. Graseck, and I don't know that we came to any great conclusion. ... We knew that the matter had gotten a great deal of publicity. It was adverse as far as I

(continued next page)

Instead, the purpose of the hearing was to discuss the charges leveled against the Society by petitioner and Boyle that the discharge decision was a response to judicial pressure. Pet. App. B, p. 8. The burden of coming forward was placed on petitioner throughout the meeting.[26]

24/ cont'd.

> was concerned to the Legal Aid Society, and was doing us no good ... so we had a public relations problem on our hands ..."

25/ In fact, Finkelstein's testimony indicated that the Committee was more concerned about adverse publicity than with resolving the controversy which precipitated the meeting (A 175):

> "Except for the charges that Graseck had wielded against us which had gotten this publicity and, you know, which the newspapers feed on, we really probably wouldn't have had a meeting."

26/ A 175.

Indeed, the fairness of the meeting was also brought into question by Finkelstein's comment, at the first trial, that, in any event, he was predisposed to the view the Society could still "... hire and fire at will."[27] Moreover, no independent investigation into any of the factual bases for the dismissal was conducted. Judges Green and Mauceri were not present at the meeting and, at no time, was the committee presented with a written list of charges against petitioner.[28]

27/ Id.

28/ "The meeting was divided into two parts; during the first half, which was open to the public, former clients of plaintiff testified on his behalf. Thereafter, the balance of the meeting was conducted in private among plaintiff, Boyle, ... [respondent]Middlemiss, Costello and the five members of the Personnel Committee."

On the day of the meeting, the Committee voted four to one to uphold the dismissal. (Pet. App. B, p. 9)

On January 24, 1973 The Society's Board of Directors met for the purpose of reviewing the decision of the Personnel Committee. The body simply voted to uphold Middlemiss' decision without stating its reasons for so doing. Pet. App. B, p. 9 . Petitioner was neither informed of nor present at this meeting. Pet. App. B, p. 9.

The dismissal procedure--or lack thereof--was indicative of Legal Aid's perception of its role as a mere adjunct of the Court; the Society never evaluated

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28/ cont'd.

The Personnel Committee then deliberated in private. (Pet. App. B, p. 8)

the impact its action would have on service to clients, but focused only on avoiding adverse publicity while being uncritically obedient to a judicial demand. It is apparent that due process safeguards which would be available to a retained attorney, perceived by a complaining Judge as overzealous, were not afforded petitioner.

An evaluation of the reasons offered to justify the dismissal and the events surrounding it demonstrates that respondent Society seriously infringed on the constitutional rights of its clients and of petitioner. The dismissal signaled to its staff the Society's preference for uncritical responsiveness to judicial suggestions over vigorous advocacy on behalf of indigent clients. It was Legal

Aid's abdication of its adversary role which prompted Mr. Boyle to resign. Addendum pp. 27-28.

Because of the Society's attempts to support its dismissal decision on the ground that petitioner allegedly exercised poor judgment, it is noteworthy that Legal Aid's view of its role had previously prompted serious criticism. In a 1970 letter to the Economic Opportunity Council of Suffolk, Inc., the Federal Office of Economic Opportunity (OEO), after conducting an extensive review of the program offered by the Society, declared it would not provide any new assistance to Respondent organization, explaining:

"This program has failed to provide quality legal representation

to the client community. Attorneys have demonstrated a lack of awareness of their responsibility for full representation of client's causes, and a lack of motivation for aggressive advocacy."

See Addendum, pp.1-8 quote at p. 2.

According to OEO, the tension between Legal Aid and the indigent community reached the point where the dominate welfare group in Suffolk County opposed the refunding of the Society (Id., at p. 4 . The facts marshaled in the OEO letter are consistent with the Society's more recent displays of unwillingness to provide effective representation to the poor of Suffolk County, when such vigorous advocacy will jeopardize its close relationship with members of the Bench, in-

cluding especially Presiding Judge Mauceri, who was helpful in securing funding for Legal Aid.

Following Judge Weinstein's decision to recuse himself, on application of respondents, the state action issue was again argued, both before Chief Judge Mishler and before the Second Circuit. Both determinations were inconsistent with Judge Weinstein's conclusion that Legal Aid engaged in state action.

The Court of Appeals acknowledged that there was at least "... an attenuated causal connection between the conduct of the judges and the action taken by the Society that normally does not exist in the regulatory context." Pet. App. A, p.29 . The Court concluded, however, that Legal Aid "...initiated the dismissal

based on its own independent evaluation of its needs, rather than at the behest of the state judges." Pet. App. A, p. 37. Despite the chronology of events and testimony discussed herein, the Court "...refuse[d] to read ..." any improper motives into the various communications from Judges Mauceri and Green to the Society, which resulted in Graseck's firing. Pet. App. A, pp.35, 32, 34 . It dismissed Judge Mauceri's comment "to get this guy out of my court" as a statement "... made in a moment of anger ...". Pet. App. A, p. 36.

Because it held that the decision should be affirmed on the basis of its view of the State action issue, the Court of Appeals did not reach the merits of petitioner's complaint or consider the

question of due process. Pet. App. A,p. 38.

REASONS FOR GRANTING THE WRIT

THE COURT OF APPEALS ERRED IN DETERMINING THAT THE DEFENDANTS-RESPONDENTS DID NOT ENGAGE IN STATE ACTION BY DISMISSING PETITIONER, THEREBY SANCTIONING IMPOSITION OF A PENALTY FOR THE EXERCISE OF CONSTITUTIONAL RIGHTS.

A. The Court of Appeals Erred in Failing to Find State Action in Spite of the Existence of a Symbiotic Relationship Which Existed Between the State and Respondent Society.

In reaching its final decision, the Court of Appeals acknowledged that: "The Supreme Court has not yet addressed the extent to which the "Symbiotic relationship" analysis of Burton v. Wilmington Parking Auth., 365 U.S. 715 (1961) survives Jackson v. Metropolitan Edison Co., 419 U. S. 345 (1974)." Pet.

App. A, pp.27-28. The Court, citing several First, Second and Third Circuit cases, noted that there is post-Jackson precedent for the proposition that actions of a private institution may fall within the state action classification "... even in the absence of direct State involvement in the challenged activity." Pet. App. A, p. 28. Nevertheless, the Second Circuit's reasoning, focusing almost exclusively on the nexus approach to analyzing the state action issue set forth in Jackson, made only a passing and confusing reference to the Burton mode of analysis:

> "not unmindful of the close working relationship here, we believe that the absence of governmental participation, let alone of

"substantial" participation, in the Society's general management and internal operations precludes a finding in this case of the degree of pervasive interdependence or partnership contemplated by Burton. See Braden v. Univ. of Pittsburgh, supra, 496 F. 2d at 635; cf. Schlein v. Milford Hosp., Inc., supra, 561 F. 2d at 428-29 (holding no state action because of absence of a nexus without discussing symbiotic relationship analysis, where the state played no part in either formulating hiring procedures of hospital or applying them to appellant.)" Pet. App. A,pp. 28-29.

One of the cases from the First Circuit, cited by the Court below, noted that Jackson specifically reaffirmed Burton's vitality in situations where a symbiotic relationship between the government and the private party being sued could be found to exist. Downs v. Sawtelle, 574 F. 2d 1 (First Cir. 1978). Quoting language from Holodnak v. AVCO Corp., Avco-Lycoming Div., Stratford; 514 F. 2d 285 (Second Cir. 1975), cert. denied 423 U. S. 892 (1975), the Court in Downs observed at p. 8. that Jackson "... took pains to stress that the absence of any proof of state initiation or enforcement would not necessarily be dispositive in all cases ... that where the state goes beyond mere regulation of private

conduct and becomes in effect a 'partner' or 'joint venturer' in the enterprise the inference of state responsibility for the proscribed conduct could more easily be made."

The Second Circuit, however, limited its discussion and failed to take account of the fact that a mutually beneficial relationship, such as the one existing between the State and Respondent Society, is the cornerstone of the symbiotic relationship contemplated by Burton. The symbiotic nature of their relationship is apparent from the fact that Legal Aid engaged in the constitutionally mandated service of providing legal assistance to indigents and plays a central role in the management of the Court's congested criminal

calendar [29] in exchange for exclusive funding of its operation by Suffolk County and the performance of administrative favors [30] by the Court.

29/ See comments of Judge Weinstein, supra at fn. 2 (herein); Also see testimony of Edward M. Elliot, a former colleague of petitioner at the Society's District Court Bureau, indicating that he viewed his role as analogous to that of a factory worker, with the judge playing the role of production manager (A 266-67):

> "It's /arraignment part/ almost like a machine operation, you just keep going to make sure things are handled properly and the parties are given their rights and released as soon as possible?
>
> A. Yes ..."

30/ A 128-30; Administrative Judge Mauceri testified that he had assisted Legal Aid in obtaining funding from the County, supplied it with the services of a Spanish interpreter and, at one time, he had adjusted the Court's internal assignment policy so that Society attorneys would

(continued next page)

In Braden v. Univ. of Pittsburgh, 552 F. 2d 948, 961 (Third Cir. 1977), the Court held that the actions of a private educational institution constituted state action where: "The state ... /through its aid program to the private institution/ was able to satisfy the educational needs of its citizens at a cost considerably lower than would have been entailed by the creation of wholly new institutions. Concomitantly Pitt /University/ was able to survive as an institution of higher education ..."; Also See Holodnak v. Avco Corp., Avco-Lycoming Div., Stratford, supra at 289-90 (a suit

30/ cont'd

represent only defendants held in custody and would be required to cover a limited number of parts.

by a union employee protesting his firing by a defense contractor for publishing an article critical of his employer and of union practices, in which the Court held that a symbiotic relationship existed between the federal government and the AVCO company, because, by supporting AVCO's plant operation, the government was simultaneously furthering its "... constitutional interest in raising and supporting an Army, and providing and maintaining a Navy. U. S. CONST. Art. I, §8, cls. 12, 13." (emphasis added)

It is apparent that the Second Circuit erred in failing to focus on the primary significance of the symbiotic relationship doctrine in addressing the state action issue in this case.

B. The Court of Appeals' ruling, calling for a higher degree of state involvement in this case, on the basis of the assumption that the challenged activity does not involve racial discrimination, should be reviewed in light of recent judicial criticism of preferential treatment for minority group members or, in the alternative, on the ground that there are, in any event, strong overtones of racial discrimination in the dismissal of petitioner.

In reaching its decision to review the relationship between the State and the Legal Aid Society under a rigorous standard before finding state action, the Second Circuit declared "...that the less stringent state action standard utilized in racial discrimination cases

is inapplicable here." Pet. App. A, p. 20 . The Court did not explain how it reached this conclusion and failed to discuss the implications of its determination in light of the recent case of Regents of University of California v. Bakke, 98 S. Ct. 2733 (1978).

Giving preferential treatment to civil rights litigants who claim that they have been the object of racial discrimination may contravene the spirit of the Bakke determination. As this Court pointed out at 98 S. Ct. 2752: " ... there are serious problems of justice connected with the idea of preference itself." The First Circuit has already expressed its disagreement with the Second Circuit on this issue. See Downs v. Sawtelle, supra. Moreover, the First Cir-

cuit has declared that even if preferential treatment of racial cases could be supported, it " ... would be inclined to group infringements of fundamental rights and racial discrimination together for the purpose of state action analysis just as they receive comparable scrutiny in equal protection cases." Downs v. Sawtelle, supra at 6, n. 5.

Assuming, arguendo, that special scrutiny should be given to cases involving alleged racial discrimination, this case does have significant racial implications. The dischrage was based, in part, on petitioner's involvement in cases involving complaints of police brutality. 31/

31/ Graseck, on occasion, traveled to the Suffolk County Human Rights Commission
(continued next page)

That police brutality was a serious problem in Suffolk County, meriting the attention of bench and bar alike, is a matter of public record. See, e.g., Coleman v. Klein, E.D.N.Y., 73 Civ. 1857 (JBW) Decision dictated into record. Respondent Society, however, perceived petitioner's efforts to grapple with the problem within the context of his representation of indigent criminal defendants as a preoccupation rather than as a useful way for a legal aid attorney to expend his energies. 32/

31/ cont'd.

and to the Internal Affairs Division of the Suffolk County Police Department. (A 51) His former supervisor, Tom Boyle, also made a point of assigning him cases in which it appeared that criminal charges had been lodged in an attempt to "cover up" police misconduct. See supra at fn. 5.

The reasoning on the basis of which the Second Circuit applies a more flexible standard in finding state action when direct allegations of racial discrimination

32/ See Trial Transcript, May 31, 1977, at 19. As previously indicated, Judge Mauceri's order banning Graseck from the Court detention area was issued at the behest of the Suffolk County Police Department. Mauceri's responsiveness to the Police Department was striking. He readily acceded to the request of a Patrolman that petitioner be excluded from the holding pens, although he himself was unaware of any rule against providing detainees with pens. The following is the exchange at trial between counsel and Mauceri on this point (A 131):

> "Q. And what did he [Patrolman Mitchell] say to you after he told you that Mr. Graseck had given the pen to a prisoner?
>
> A. He [Graseck] had done that and left without telling anybody ... he [Patrolman Mitchell] said on occasion he's [petitioner's] done it before and would it be all right to keep him out of the back
>
> (continued next page)

are involved would justify application of that standard to this case. See Taylor v. Consolidated Edison Co. of New York, Inc., 552 F. 2d 39, 42 (Second Cir. 1977), cert denied, 434 U.S. 845 (1977): "Because of the generally recognized anathematic status of any government sponsored racial discrimination, for instance, we have held that a lesser degree of state involvement is needed in cases alleging such discrimination ..." It is apparent that racial minorities are overrepresented both as clients of

32/ cont'd.

> room of the ...[lock up]. So I said, fine.
>
> Q. Was there a rule at that time [which] forbade prisoners from having pens in the ... [lock up]?
>
> A. I assume there was no rule."

such free legal assistance programs as that respondent Society contracts to provide and as victims of police misconduct. Because a Legal Aid lawyer, to a far greater extent than a private attorney, can be accurately categorized as an attorney for minority groups, action directed against a lawyer for indigent defendants, because of his insistence on behalf of such clients, is closely related to racial discrimination.

For the foregoing reasons, it is respectfully urged that this Court grant the within petition, inter alia for the purpose of making it clear, as the First Circuit has declared, that the existence or absence of state action cannot depend on whether claims of racial discrimination, as distinguished

from other violations of fundamental rights, are before the Court.

C. The Second Circuit erred in concluding that respondent Society did not engage in state action, even though it was virtually the sole source of legal representation for indigent criminal defendants charged in Suffolk County and was exclusively funded by the County.

The Court below rejected the argument that Legal Aid had engaged in state action in dismissing petitioner by virtue of the fact that its activities in the criminal area were exclusively funded by Suffolk County and that it had never maintained a meaningful private existence prior to such funding. Pet. App. A, pp. 21-24. Lefcourt v.

Legal Aid Society, 445 F. 2d 1150 (Second Cir. 1971) was treated as controlling even though the defendant, in that case, received considerable private financing and had maintained a healthy private existence long before it sought governmental assistance.

In sharp contrast, respondent Society, herein, enjoys its virtual monopoly status in the area of indigent criminal defense entirely as a result of its contractual arrangement with Suffolk County, which entity is the sole source of its funding. Pet. App. A, p. 22 fn. 19. Because of the County's decision to enter into agreements with Legal Aid, almost all indigent criminal defendants in Suffolk County must accept

representation by one or more of respondent Society's agents or undertake to act as their own counsel.

Because of the inability of an indigent defendant to make his own selection, it is extremely difficult for a legal aid attorney to develop a good rapport with him--so important to the presentation of an adequate defense, which depends upon a good working relationship between attorney and client. 33/

33/ See Report by Jonathan D. Casper, Department of Political Science, Stanford University, "Criminal Courts: The defendant's Perspective (1976) pp. 211-12, "One of the major sources of client suspicion ... is the institutional position of the public defender. Public defenders (whether assigned or working for public defender organizations) do not engage in financial exchanges with clients, and hence clients do not feel they have the leverage that such an exchange can provide. Moreover, the

The Legal Aid Society of Suffolk County never developed a tradition of vigorous assertion of defendants' rights. The criminal division owes its role and existence exclusively to the County's decision to contract with it. Therefore, respondent Society, which enjoys virtual monopoly status in Suffolk County [33/]

33/ client typically cannot choose his public defender, but one is simply "given" to him. Finally not only is the client not in a position to pay the public defender, but someone else is; and that "someone" is also paying the prosecutor and judge, leading many defendants to have real doubts as to whether "their" lawyer really belongs to them. ... Many defendants believe--rightly or wrongly--that privately retained attorneys are "real" lawyers, and that appointed counsel are somehow inferior substitutes. This belief ... stems from the fact that there is a marketplace in which one can "buy" the services of attorneys. Defendants realize that they cannot participate in it but believe that what is available there is somehow superior to what is "given" them free of charge. ..."

as the provider of criminal defense services to indigents, almost unilaterally determines the quality of representation available to such clients. Moreover, it irresponsibly heightens client distrust by focusing on judicial concerns and neglecting those of indigent defendants.

Legal Aid's virtual exclusive control over the funds for the defense of indigent criminal defendants in Suffolk County enables it to restrain its staff from engaging in the vigorous representation to which clients are entitled pursuant to the Code of Professional Responsibility and in accordance with the Sixth Amendment. The monopoly status enjoyed by respondent Society gives it the power to set an

informal standard and to deprive its clientele of the right to vigorous legal representation. See, for example, A 310-34, Addendum, pp. 36-54, statements of employees and of former clients of respondent Society which were admitted into evidence during trial, particularly at pp. 36-39, 40. The connection between Legal Aid's County-created monopoly status and its willingness and power to subordinate provision of determined advocacy to maintaining rapport with powerful representatives of the local government, strongly indicates that a finding of state action on the part of respondent Society should have been made. In Jackson v. Metropolitan Edison Co., supra, 419 U. S. 351-52, this Court indicated that a sufficient

"... relationship between the challenged actions of the entities involved and their monopoly status ..." might render appropriate a finding of state action.

D. The Second Circuit's conclusion that there was no state action makes possible evasion of Sixth Amendment responsibilities; by enabling the State to delegate such obligations to a formally private entity, which cannot be held accountable for civil rights violations.

Since Gideon v. Wainright, 372 U.S. 335 (1963), the fundamental and sweeping nature of the Sixth Amendment's guarantee of the right to counsel has been clear. The conclusion that respondent Society did not engage in state action could seriously undermine the

special protection afforded under the Sixth Amendment and effect a de facto repeal of the Gideon decision.

By permitting the actions of Legal Aid, the transferee of the government's responsibility to provide counsel for indigents, to be treated as private conduct, the Court's decision seems to provide a loop hole, which will make possible evasion of the Sixth Amendment duty to provide the meaningful and effective assistance of counsel to indigents.

In practical effect, the Second Circuit has ruled that Sixth Amendment protections cannot be enforced on behalf of the poor. Thus, a dangerous precedent is established which can be used to frustrate the goal of equal justice

under law, by relegating to indigent defendants the mere form of representation by counsel, without the reality of independent advocacy.

The problem of providing adequate representation to the powerless is most difficult. It appears that such clients' inability to effectively demand quality representation renders enforcement of theoretical rights virtually impossible, particularly if federal courts can be expected to determine that they lack jurisdiction to consider such matters.

In a paper entitled Inmate Study of 18 B Indigent Defense Panel (Court Appointed Attorneys) prepared by The Prison Reform Task Force of the New York Society for Ethical Culture for

Inmate Committee for Judicial and Legislative Reform, dated May 27, 1977, the following language was used at p. 7:

> "... Judge Irving Ben Cooper ..., in speaking of one particular trial on the federal level stated that the attorneys appointed by the court "lacked preparation, failed to submit the memoranda of law he asked for, did not call defense witnesses, failed to question government witnesses and failed to advance any theory in the case that would help their client 'the impression was poor, it was ragged, it was disheartening'." ... What Judge Cooper said of the attorneys in that particular trial can also be said for the

> majority of cases of indigent defendants who are respondents to this survey."

Moreover, the broader implications of this decision might enable the State to ignore other responsibilities, spelled out in the Constitution, by transferring the implementation of such obligations to formally private individuals or groups.

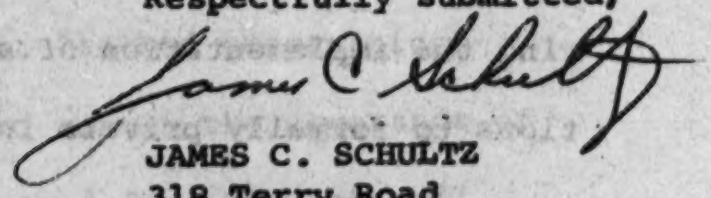
Therefore, it is respectfully urged that this Court grant certiorari to review the Second Circuit determination, in order to protect the fundamental nature of the Sixth Amendment guarantee from erosion, through the mechanism of delegation of responsibility from the State to a formally private entity.

CONCLUSION

For the reasons stated, the Petitioner respectfully prays that the Writ of Certiorari be GRANTED.

Dated: Port Washington, New York
November 20, 1978.

Respectfully submitted,



JAMES C. SCHULTZ
318 Terry Road
Hauppauge, New York 11787

ARTHUR V. GRASECK, JR.,
of Counsel

Attorneys for Petitioner

A D D E N D A

Table of Contents

LETTER DATED FEBRUARY 27, 1970

(RETYPED)

FEB 27, 1970 (stamped)

Mr. William Larregui (handwritten):
Director
Economic Opportunity Council ltr also to
of Suffolk, Inc. CC: to Louis F. Buck
83 East Main Street Chrman.
Patchogue, Long Island, New York Bd. of Dirs.

Dear Mr. Larregui:

The Office of Economic Opportunity has conducted an extensive review of the legal services program conducted by the Legal Aid Society of Suffolk County, Inc., ("The Legal Aid Society,") a delegate agency of the Economic Opportunity Council of Suffolk, Inc., (the Economic Opportunity Council"). We have concluded that the program conducted by the Legal Aid Society has been ineffective and inefficient and has failed to provide adequate legal representation to the poor of Suffolk County. Consequently, the Office of Economic Opportunity has made a tentative decision not to provide new assistance to the Legal Aid Society after March 31, 1970. However, to enable the Legal Aid Society to conclude its program we are providing the Economic Opportunity Council with a

grant of $43,362 to be delegated to the Legal Aid Society. It should be noted that the termination date of this grant is March 31, 1970.

We request that the Economic Opportunity Council and the Legal Aid Society submit a plan for closing its current program. This plan must include adequate provision for handling the current cases which Legal Aid attorneys have received as part of the approved work program of the Office of Economic Opportunity grant. Such a plan should be submitted no later than March 15, 1970 to Terry F. Lenzner, Associate Director for Legal Services, Office of Economic Opportunity, 1200 19th Street, N.W., Washington, D. C. 20506.

The following reasons form the basis of the Office of Economic Opportunity's decision not to refund that portion of Office of Economic Opportunity Grant No. 0394 which is used to support the activities of the Legal Aid Society.

1. The program has failed to provide quality legal representation to the client community. Attorneys have demonstrated a lack of awareness of their responsibility for full representation of clients' causes, and a lack of motivation for aggressive advocacy. One attorney had never appealed a

welfare hearing decision on the ground that the client could not afford the cost of the transcripts although in New York State transcripts are provided without charge. Other attorneys had no knowledge of relevant legislation and court decisions. Reflective of the situation is the total inadequacy of the libraries. One attorney had a copy of the Poverty Law Reporter in which not one supplement had been filed. The attorney indicated that he rarely researches a point of law. Many of the attorneys have only recently been admitted to the Bar and yet there are no regular staff meetings or training sessions. The end result has been a low quality of service.

Statistical reports for 1969 further indicate a marked lack of activity by the Legal Aid Society. For example, the statistical report submitted by the Legal Aid Society to the Office of Economic Opportunity (CAP Form 58a) for the period October--December 1969 indicates that during the three month period, the project accepted 1,395 cases. Of that number only 77 cases were litigated and only 78 of the cases not litigated

were resolved in a manner which

2. The Legal Aid Society has failed to provide adequate skilled legal representation to the low income residents of Suffolk County. Evaluators who visited the program found significant dissatisfaction among members of the client community regarding the operations of Suffolk legal aid. Some clients complained of the lack of communication between attorneys and clients. Others complained that the attorneys were vague and unprepared in court. The bitterness of the complaints is best illustrated by the negative attitudes of many welfare recipients. They found the attorneys disinterested and in some instances hostile to their problems. As a result, the dominant welfare group in the county has retained its own counsel and actually opposed refunding of the Legal Aid Society. The existence of this situation is indicative of the program's obvious lack of communication with the community.

3. The special conditions of the grant to the Legal Aid Society stress the importance of the project's actively engaging in both

community action and law reform. The special conditions state:

"By March 1, 1969, delegate agency shall submit satisfactory to the Regional Legal Services Director of Office of Economic Opportunity's detailed program, of law reform and community action, including:

1. Long range and short range goals
2. Participation of the target community and low income groups in establishing priorities
3. Organization, incorporation, and representation of low income groups
4. Test cases and class actions
5. Legislative and administrative reform
6. Provisions for backup research
7. Intra-project and inter-project coordination
8. Timetable for implementation

The project has not only failed to submit the detailed program in a manner satisfactory to the Office of Economic Opportunity Regional Services Office as required by the special conditions but has also failed to involve itself in an adequate manner in community action

or law reform. Most of the attorneys admitted to evaluators that they never get out into the community and rely solely upon clients who walk in for services. The investigators' work is primarily eligibility investigations. The evaluation indicated that they have never worked with any community group or had any significant contacts within the poor community.

4. The project has failed to develop and implement acceptable priorities in accordance with special conditions incorporated in previous grants from the Office of Economic Opportunity. The absence of such priorities has resulted in the growth of an unmanageable and undefined caseload. For example: one attorney had opened 690 new matters in a recent three month period. Such a situation renders it impossible to adequately give even routine legal advice, much less deal with law reform issues or to thoroughly research a point of law. Conditions which impair judgment or deteriorate the quality of legal counselling constitute a violation of the promise to provide quality legal representation. No one attorney has developed an expertise in any area of poverty law, resulting in wholly inadequate progress in initiating meaningful

law reform activity on behalf of the low income residents of the community.

5. The Board of Directors has not demonstrated the ability to function as an effective policy-making body. Meetings are infrequent with varying attendance.

In accordance with Office of Economic Opportunity policy, you may submit written material in refutation of the reasons for the Office of Economic Opportunity tentative decision not to refund the Legal Aid Society. In addition, the Office of Economic Opportunity will, at your request, hold an informal meeting at which time you may make an oral presentation as to why the Legal Aid Society should be refunded. Any request for such an informal meeting must be made in writing by the Board of Directors of the Economic Opportunity Council and/or by the Board of Directors of the Legal Aid Society no later than March 10, 1970. Any such request should be sent by registered mail to Terry. F. Lenzner, Associate Director for Legal Services, Office of Economic Opportunity, 1200 19th Street, Northwest, Washington, D. C. 20506.

Both the Economic Opportunity Council and the Legal Aid Society have the right

to be represented by counsel at the informal meeting discussed above. In addition, the Office of Economic Opportunity will at your request authorize the Boards of Directors of the Economic Opportunity Council and the Legal Aid Society to use grant funds to pay travel and per diem expenses for two representatives of each organization to attend the informal meeting. If the Economic Opportunity Council wishes to be represented by an attorney at the informal meeting and does not have an attorney acting in that capacity as a regular staff member, the Council will be authorized to use grant funds to obtain the services of an attorney. This use of grant funds will be limited, however, to the payment of a legal fee which may not exceed $100 for an attorney to attend the meeting and the travel expenses and per diem of the attorney. If the Legal Aid Society wishes to be represented by counsel at the informal meeting the Board of Directors of the Legal Aid Society will be authorized to use grant funds to pay the travel and per diem expenses of an attorney on its staff to attend the meeting. The payment of all travel and per diem expenses must be in strict conformity with Office of Economic Opportunity Instruction 6910-1.

Sincerely,

Terry F. Lenzner
Associate Director for
the Office of Legal Services

PLAINTIFF'S EXHIBIT 5

RESUME OF ARTHUR V. GRASECK, JR.

ARTHUR V. GRASECK, JR.
70 Davis Road
Port Washington, New York 11050
516 P07-2486

PERSONAL: **Age: 39; Single; Military Obligation Completed**
Bar Status: Member of New York and Federal Bars

LEGAL EDUCATION: **NEW YORK UNIVERSITY LAW SCHOOL, LL.M., June, 1968**
YALE LAW SCHOOL, LL.B., June, 1963
Finalist, CARDOZO Moot Court Brief Prize; Legal Aid

PRE-LEGAL EDUCATION: **HOBART COLLEGE, B.A., August, 1956**
Major: Sociology
Honors: Phi Beta Kappa
Cum Laude
Sociology Prize

LEGAL EMPLOYMENT: **PRIVATE PRACTICE, representing criminal defendants. 10/72-Present**

SUFFOLK COUNTY LEGAL AID, representing defendants in criminal

matters. 7/71-10/72

COUNSEL, Assemblyman Irwin J. Landes, 18th A.D., Drafting proposed legislation. 1/71-4/71

DEPUTY NASSAU COUNTY ATTORNEY, Mineola, New York, 2/67-12/67; 1/69-1/71.
Arguing Article 78 proceedings, research on proposed County projects, appellate briefs, opinion letters.

NASSAU COUNTY LAW SERVICES COMMITTEE, INC., Mineola, New York, 7/68-1/69
Attorney in charge of Hempstead Office; arguing and preparing cases for court and administrative determination.

COOPER, OSTRIN, DEVARCO AND ACKERMAN, New York City, 12/67-7/68
Arguing before administrative agencies, trial assistant in court cases, appellate briefs.

NEW YORK STATE LABOR RELATIONS BOARD, New York City, 10/64-1/67
Drafting decisions, reviewing and reporting on records

of hearings, interviewing complainants, preparing charges and petitions, supervising representation elections.

SERVICE RECORD: U.S. NAVY, 2/57-6/60
Duties: Intelligence Agent, Ship's Legal Officer
Argued court-martial cases.

PLAINTIFF'S EXHIBIT 10

NEWSPAPER ARTICLE

(RETYPED)

LEGAL AID CHIEF RESIGNS IN DISPUTE

By John Hildebrand November 7,1972

A branch chief of the Suffolk Legal Aid Society has resigned, charging that the society has bowed to undue pressures from the administrative judge of the District Court, Angelo Mauceri. Mauceri has angrily denied the charge.

Attorney E. Thomas Boyle, head of a six-man Legal Aid unit in Riverhead, charged in his resignation letter of Oct. 31 that the society has recently fired a fellow lawyer, Arthur Graseck, for falling into "judicial disfavor."

"...It is of grave importance that the Legal Aid Society, despite its County

funding, remain independent and totally uninfluenced by any branch of County Government," wrote Boyle, whose resignation is to take effect Dec. 1.

"Mr. Boyle is off his rocker!" replied Mauceri, who has been in charge of administration for Suffolk's District Court system since the first of the year. While he denied applying pressure, Mauceri said that he had twice criticized Graseck's courtroom behavior in talks with Graseck himself and with two of his Legal Aid superiors. The society is a private corporation that has received more than $600,000 in county funds this year to defend impoverished persons.

Boyle's letter contended that Legal Aid's staff director of 12 years, John F.

Middlemiss Jr., had fired Graseck on Oct. 13 because of Mauceri's pressure. A copy of the letter was given to Newsday by an outside source who asked not to be named. Middlemiss denied that pressure had been applied and declined to discuss his reasons for firing Graseck, saying only that the action was prompted by "certain actions (by Graseck) brought to my attention by Judge Mauceri and many other people."

"Look, what's the alternative?" asked Mauceri, in discussing his criticism of Graseck. "I could go to the Bar Association (for a formal hearing). But maybe the guy made a mistake. So I call his boss just like I would with any private lawyer." Mauceri added that, in

his five years on the Suffolk bench, he has not found cause to criticize any *other lawyer in the same way.*

As an example of what he considered to be Graseck's "improper" behavior, Mauceri cited a court paper signed by the 36-year-old lawyer in September. In that document, a review of a criminal trial, Graseck suggested that another district judge "has functioned as an agent of the district attorney ..." Mauceri said that he thought Graseck should refrain from such charges, unless he were willing to submit them to the Suffolk County Bar Association for review.

"The guy's a bum," said Mauceri of his courtroom encounters with Graseck. "He comes into court soiled all the time --

looks like a bum off the Bowery." But he added that his formal criticism of Graseck had applied to courtroom actions, not attire. Graseck and Boyle declined to comment on Mauceri's statements, saying that they were awaiting a review of the case by the Legal Aid Society.

"I'd just like to give Legal Aid a chance to take a fresh look at what's happened," said Graseck, a Port Washington resident with prematurely gray, shoulder length hair, who favors modish knit suits and wide ties. Legal Aid officials confirmed that their personnel committee had tentatively scheduled a Nov. 15 meeting to discuss the matter.

While society officers would not comment directly on the dispute, several said they were not surprised that Graseck,

who considers himself a social activist, would ruffle some local officials.

"In this area, I think you've got to get along with the bench," said one Legal Aid director, himself a lawyer. "In one area, like Suffolk, a lawyer may take very strong positions in a case, and it'll subject him to criticism ... But in another area, like Manhattan say, people are willing to accept it ... The spirit here is toward getting along. This is more of a provincial community."

Legal Aid Officials agreed on the competence of Boyle, a soft-spoken, 33-year old St. James resident who has worked for the society for six years. Many said they hoped that Boyle would not quit, which could create a backlog of cases. "He's a good lawyer," Mauceri conceded.

"But he has an immature mind."

Photograph of E. Thomas Boyle

Newsday Photo by Mitch Turner

"...It is of grave importance that the Legal Aid Society ... remain independent ...," said lawyer E. Thomas Boyle, who resigned criticizing the actions of Judge Angelo Mauceri.

Photograph of Angelo Mauceri

Newsday Photo by George Rubef

"Mr. Boyle is off his rocker!" replied Angelo Mauceri, the administrative judge of Suffolk's District Court, seen here during the 1971 election.

PLAINTIFF'S EXHIBIT 11

NEWSPAPER ARTICLE

(RETYPED)

CRITIC'S RESIGNATION QUESTIONED

By John Hildebrand November 9, 1972

District Court Administrative Judge Angelo Mauceri has said that a critic who recently resigned from the Suffolk Legal Aid Society, protesting "pressures" from the judge, might have been planning to quit anyway.

The critic, Legal Aid branch chief E. Thomas Boyle denied this. He said, relatives had encouraged him to enter private practice, but added that he had not agreed to the idea. Last week, Boyle resigned effective Dec. 1, charging that the society had fired a fellow lawyer, Arthur Graseck, for falling into Mauceri's

"judicial disfavor." Boyle contended that the independence of the society, which defends indigents in court, was at stake.

In a Nov. 2 letter to the society, Mauceri denied the allegation, and said: "I want...to state, for no other reason but to show my utter distaste and contempt for this type of attack, that on two occasions earlier this year Mr. E.T.B. (Boyle) told me he was being asked to go into private practice ... This alleged incident (the firing) may have been the catalyst for him."

Mauceri complained also that Boyle, despite his "fervor for independence from the judiciary," had asked him earlier this year to lobby for passage of Legal Aid's requested $1,200,000 county budget. Mauceri has been the administrative judge of the

county's 258-employe district court system since the first of the year.

"I have no future plans," replied Boyle, who heads a six-man Legal Aid unit in Riverhead. He declined to comment on his alleged request to Mauceri to lobby for Legal Aid's budget, saying that he wanted to discuss the matter privately with the society's personnel committee. The committee is tentatively scheduled to review the Mauceri-Boyle dispute Wednesday.

In a related development, Mauceri flatly denied a published report that he had referred to Graseck, the fired attorney, as "a bum." But a reporter's notes, based on a recent half-hour interview with the judge, indicate that Mauceri said of Graseck: "He comes into court soiled all

the time -- looks like a bum off the Bowery."

Henry G. Wenzel, a past president of the Suffolk Bar Association, said that the association probably would not review the case unless one of the disputants requested such action. "I can't call to mind anything that would prevent a judge from criticizing the attire of an attorney when he comes to court," said Wenzel.

Graseck has declined to reply publicly to Mauceri's comments, saying that he wants to give Legal Aid "a chance to take a fresh look at what's happened." The 36-year-old Port Washington attorney, who studied at the Yale and New York University law schools, worked at Suffolk Legal Aid from July, 1971 to last Oct. 13

and said he handled about 40 cases. He has said that he formerly worked for a Manhattan law firm, the State Labor Relations Board and the county attorney's office in Nassau.

Shortly before he was fired, Graseck was assigned by Legal Aid to represent Etanislao Oquendo, a Brentwood man charged with resisting arrest and harassment of police. The dismissal was effective shortly before Oquendo's trial began. Society officials have said that they would have provided another lawyer for Oquendo, but Graseck retained the case, though he said he received no payment. A jury found Oquendo innocent on the first charge, and was unable to decide on the second. A retrial is scheduled for Nov. 27, and Graseck says he will defend Oquendo again.

John F. Middlemiss Jr., the Legal Aid director, has said that he fired Graseck for "certain actions brought to my attention by Judge Mauceri and many other people." One complaint by Mauceri involved a court paper written last September by Graseck, which suggested that District Court Judge Edward U. Green had "functioned as an agent of the district attorney..." Green said yesterday that he had originally reported the incident to Mauceri because "the court record didn't substantiate what he (Graseck) said." Graseck insists that it did.

PLAINTIFF'S EXHIBIT 2

LETTER DATED OCTOBER 31, 1972

October 31, 1972

Howard Finkelstein, Esq.
President, Board of Directors
Legal Aid Society of Suffolk County
456 Griffing Avenue
Riverhead, New York 11901

Dear Mr. Finkelstein:

It is with regret that I herein submit my resignation from the Criminal Division of the Legal Aid Society to become effective on December 1, 1972. Notice of this decision was given to Mr. John Middlemiss personally on October 24, 1972.

I feel obliged to offer an explanation for the action which I have taken.

Mr. Arthur Graseck, an attorney employed by the Criminal Division of the Legal Aid Society, assigned to the First District Court in Hauppauge was summarily discharged on Friday, October 13, 1972. He was at that time confronted by Mr. Middlemiss with a type-written letter of resignation which Mr. Graseck refused to sign. Thereafter, Mr. Graseck was ad-

vised that his services with Legal Aid were terminated.

Upon being advised what had occurred, I consulted Mr. Middlemiss with regard to the particular acts of conduct which led to the severe action taken in Mr. Graseck's case and urged reconsideration and re-instatement. Based on Mr. Middlemiss' explanation of the situation, I have concluded that Mr. Graseck was fired as a result of certain pressures brought to bear by the administrative judge of the District Court, Angelo Mauceri, J.D.D., and that Mr. Graseck's firing was totally unwarranted under the circumstances and not in the best interest of the Legal Aid Society or the persons whom we represent.

In my opinion, it is of grave importance that the Legal Aid Society, despite its County funding, remain independent and totally un-influenced by any branch of County government, whether it be executive, legislative or judicial. This is no higher standard than that imposed upon any other attorney assigned or retained to represent a client before the bar. As stated in Canon 15 of the New York State Bar Association Canons of Ethics:

> "No fear of judicial disfavor or public unpopularity should restrain him from the full discharge of his duty. In the judicial forum the client

is entitled to benefit of any and every remedy and defense that is authorized by the law of the land, and he may expect his lawyer to assert every such remedy or defense."

It is apparent from my investigation that Mr. Graseck was discharged for incurring "judicial disfavor". A grave injustice has been committed on Mr. Graseck personally, and of equal importance, this incident can only serve to have an adverse effect on the quality of representation provided those in the County who seek the services of Legal Aid.

I cannot accept this decision. I feel it marks a turning point in the history of the Criminal Division of the Legal Aid Society and under no circumstances do I want to be associated with an organization which has lost sight of its primary purpose and function. I can think of no other single act which will more serve to dampen the zeal and vigor of a Legal Aid Attorney's defense of his client than the threat of dismissal for incurring "judicial disfavor".

I shall remain deeply indebted to the Legal Aid Society for the unique opportunity it has afforded me to grow in knowledge and experience in the practice

of law.

Sincerely yours,

/S/ E. T. B.

E. Thomas Boyle,
Attorney in Charge of
the County Court

ETB:mla
Copies to:

DISTRICT COURT OF SUFFOLK COUNTY

BOX 1000
Veterans Memorial Highway
Hauppauge, New York 11787

HON. ANGELO MAUCERI
Administrative Judge

EDWARD M. BARRY
Chief Clerk

JOSEPH W. VAIL
Deputy Chief Clerk

November 2, 1972

PERSONAL & UNOFFICIAL

Howard M. Finkelstein, Esq.
President, Board of Directors
Legal Aid Society of Suffolk County
456 Griffing Avenue
Riverhead, New York 11901

Dear Mr. Finkelstein:

Mr. Middlemiss was kind enough to provide me with a copy of a letter that Mr. E.T.B. sent to you and the Board of Directors of the Legal Aid Society. It is fortunate, or unfortunate, depending on Mr. Boyle's point of view, that he refrained from sending me a copy. I am sending him a copy of this letter, a courtesy he did not afford me which is interesting since he has cloaked himself as a champion of individual rights.

Mr. E.T.B. accuses me, as Administrative Judge, of applying judicial pressure to Mr. Middlemiss which resulted

in your Mr. Grasseck's dismissal. I deny any pressure was applied. I have in the past registered complaints about Mr. Grasseck's conduct in the Court, both with Mr. E.T.B. and Mr. Middlemiss and I can document these complaints as I did with them. I consider the accusations of Mr. E.T.B. a libel of my reputation and integrity, both as an individual and as a member of the judiciary, and I will treat it as such. I request that Mr. E.T.B. document his accusations and that I be provided with a copy of that material so that everyone will have a clear and concise understanding of what he claims occurred.

It is interesting to note, that in Mr. E.T.B.'s zeal and fervor for independance from the judiciary and freedom from judicial disfavor, it did not extend to judicial favor when he was in charge of your bureau in the District Court. If he did, he would have told you of the three occasions he personally asked me, as Administrative Judge, to use my office to intervene on behalf of Legal Aid to the County Executive and members of the Legislature to have your budget passed. Or, when claiming he was short personnel, asked if I as Administrative Judge would allow the assignment of more cases to outside counsel and limit Legal Aid appearances to one criminal part, which I agreed to do. Incidentally, that did not diminish the applications by Legal Aid attorneys for dismissals on the grounds that no trial parts were available. He would

have told you of many occasions in which he asked for and received help to administer his office in this Court. It appears that zeal and fervor, and American ideals is a one way street reserved for Mr. E.T.B., solely for the use of Mr. E.T.B.

His accusation and innuendo and general description of anarchy in the courts is an insult to the integrity and the dedication of all the men and women who practice law in the Legal Aid Society in these courts. I see them in the Court each day and have tried cases with them, their dedication to the rights of their clients has not diminished in any way. I challenge Mr. E.T.B. to specify and document one incident where judicial pressure was brought upon a Legal Aid attorney to dispose of a case in a manner detrimental to his clients. This is pure hogwash and will not stand the light of scrutiny. You are indeed fortunate to have been left with attorneys such as the caliber of the people I speak about who will continue the high ideals of the Bar, notwithstanding Mr. E.T.B.'s unfounded fears.

I want also to state, for no other reason but to show my utter distaste and contempt for this type of attack, that on two occasions earlier this year Mr. E.T.B. told me he was being asked to go into private practice by members of his family and that he just might do that. This alleged incident may have been the catalyst

for him.

I have known Mr. Middlemiss for close to fifteen years, as an attorney and as a man. I found him to be a person of high principle and integrity who cannot be pressured by anyone including Mr. E.T.B. and for Mr. Boyle to make that accusation in light of his performance is untenable.

I respectfully request and would appreciate it, if you would send me any documentary proof that Mr. Boyle can provide of these scurrilous attacks upon my integrity and my position as a member of the judiciary.

Very truly yours,

/S/ Angelo Mauceri

Angelo Mauceri
Administrative Judge

AM:mk
cc: Edward T. Boyle, Esq.
Board of Directors

PLAINTIFF'S EXHIBIT 4

LETTER DATED OCTOBER 12, 1972

DISTRICT COURT OF SUFFOLK COUNTY

BOX 1000
VETERANS MEMORIAL HIGHWAY
HAUPPAUGE, NEW YORK 11787

HON. ANGELO MAUCERI
Administrative Judge

EDWARD M. BARRY
Chief Clerk

JOSEPH W. VAIL
Deputy Chief Clerk

October 12, 1972

John F. Middlemiss, Jr., Esq.
Legal Aid Society of Suffolk County
260 W. Main Street
Bay Shore, N. Y. 11706

Dear Mr. Middlemiss:

One of your attorneys, Mr. Grasseck, committed a very serious offense this morning while visiting a prisoner in the cellblock area without the knowledge of the security man. He gave to that prisoner a fountain pen, which could be used as a weapon. This is a serious breach of security and I have issued an order today barring Mr. Grasseck from the cellblock area.

I think that your office should advise this man of the seriousness of his action so that he does not repeat it at any other location.

Very truly yours,

/S/ Angelo Mauceri

Angelo Mauceri
Administrative Judge

AM:mk
cc: Frank Costello
Legal Aid - Hauppauge

DEFENDANTS' EXHIBIT EE

DOCUMENTS SUPPLIED BY PLAINTIFF AT PERSONNEL COMMITTEE MEETING

To whom it may concern; (handwritten)

I have been an attorney with the Legal Aid Society since January, 1972. During these past ten months I have personally undergone many changes in my attitudes toward criminal justice, my clients and the judges of the First District Court. Many of these changes, which I feel have made me a better attorney, I attribute directly to Thomas Boyle and Arthur Grasek. For this reason as well as others which I shall allude to in this letter I do not feel Arthur Grasek's

I do not believe I have reached the above conclusion by naively seeing only one side of the issue and judging accordingly. Rather, I attribute to myself a measure of objectivity and in this light I am aware of many of the criticisms levelled at Mr. Grasek. A number of these criticisms I feel are valid. Nevertheless, I feel that each and every member of the Legal Aid Society is open to criticism and in several cases this criticism would be much more severe than anything that can be said against Arthur Grasek.

As an example of this I refer to

day in the sentencing part of the court. I observed one of our attorneys appear for

sentencing with a client with whom he had not spoken and a legal aid file which apparently had not been read beforehand. When asked by the judge whether he wished to be heard before sentencing the attorney declined the offer and the judge proceeded to sentence the defendant solely on the basis of the probation report which is furnished prior to sentencing. Perhaps, the result in this case would have been no different had it been handled in a more thorough and proper manner but I do think that our clients are entitled to a maximum effort on our part.

The reliance upon other parties, usually the judge, to perform functions which are within the scope of proper defense work is what I consider to be the key malfunction of the Legal Aid Society. The judge is at best a neutral arbiter who must by necessity concern himself with many administrative and judicial functions and cannot be solely concerned with the defendant. That job is left for the defendant's attorney and when he begins to be concerned about the judge's administrative problems, e.g. seeing that the part of the court he is working runs quickly and smoothly, he loses site of the only duty he must perform in court; the protection of the legal rights of his client. The Legal Aid Attorney is not another arm of the court but rather he must be a separate independent entity.

The best example I can give for what

I mean is myself. When I first began with legal aid I made a special effort to get along well with all the court the judges. Although this is my natural inclination anyway I also felt that this was the best method to aid my clients. This approach has proved valid to a great extent but only when one realizes its limits. Upon reflection I fear that there were numerous instances where I was rushed to make a decision which, given my limited criminal experience I could not make hurriedly. Nevertheless I did make these decisions to the detriment of my client. Arthur Grasek, as a friend and associate, shared with me his views as to the pressures confronted by each legal aid attorney everyday, and in part is responsible for my realizing that to do a good job these pressures must be resisted.

Arthur Grasek was beyond any doubt the most industrious and hard-working attorney employed by legal aid. According to the people who terminated his employment he was also a superior trial attorney. It seems quite exceptional to me to release someone with these credentials.

It is my opinion that men like Arthur Grasek are imperative to the proper functioning of the legal aid society and that unless we intend the Society to stand as a mere token or symbol of a Defense Attorney we cannot afford to let such men leave.

If a meeting is held where views can be aired I would appreciate being given an opportunity to speak.

Very truly yours,

/S/ George Grun

Defendant's Exhibit EE

Mr. Graseck as a legal aid seemed very much concerned in me & in my case. He wasn't like most legal aids who treat it as just another case. He acted as though he was really there to help me pull through the case & stuck by me as you would find in real lawyers & most likely not a legal aid.

Sincerely,

/S/Vincent McElhiney

Defendants' Exhibit EE

11-12-72

MRS. C. HALL
29 RALPH AVE
E. BRENTWOOD - L.I.
N.Y. 11717 **(handwritten)**

to Whom it May Concern

In reference of Att. at L. A. Graseck who has taken the oath of honesty and fairness and to defend innocent people and the underprivledge.

Att. A Graseck was only doing what he saw. The gentleman only went by the good book and was not breaking any law that we could see. It was things that he brought out in opening.

I remain

/S/ Mrs. C. Hall

Defendants' Exhibit EE

(handwritten)

Centre Island
Oyster Bay, New York
November 12, 1972

Dear Sirs:

As a summer intern with the Criminal Division of the Legal Aid Society in 1972, working in the First District Court in Hauppauge, I had ample opportunity to observe Arthur Graseck at work and indeed to work directly with him on a number of matters. He is, in my opinion, one of the most dedicated and hardworking lawyers around. He was impressive to watch and interesting to work with. He fights very hard for his clients and, I honestly believe, he serves them well. Mr. Graseck is extremely thorough and conscientious in preparing his cases and I do not see how any defendant could suffer because of having Mr. Graseck as his attorney. He is an able and concerned advocate and lawyer.

Very truly yours,

/S/Patience Outerbridge

Defendants' Exhibit EE

(handwritten)

Board of Legal Aid,

In my contact with legal aid, I have had several lawyers who have represented myself and my son. Only Mr. Graseck has really done his job as a lawyer. This I feel is what they are for, to represent the people, poor people, who can't afford a private lawyer.

Mr. Graseck is an excellent lawyer. Suffolk County should try and get rid of such judges not Mr. Graseck.

Witness: /S/ Mrs. Inez Diamond
Helen Ackley
Victor Torres.

Defendants' Exhibit EE

(handwritten)

Daniel Rathjen
111 W. 1st St.
Ronkonkoma, N. Y.

Being represented by Mr. Grazeck left me in complete trust of the Judicial system. To date Mr. Grazeck has been a lawyer I will always look up to.

/S/ Daniel Rathjen

11/12/72

witness:
Sue Wasserman
Charles Powell

Defendants' Exhibit EE

(handwritten)

Atterney Grassick is a very good lawer

I would like to see him get his job back.

Mr. Grassick defends all People equally.

He treats all People equally.

/S/ Rosetta Wheat
11 Garden St
Bay Shore N Y

Defendants' Exhibit EE

(handwritten)

to whom it may concern

I PhillipBames do feel that I was defended by attorney Aerathe Graseck to the best that he could and I am very happy with the court decree in my case. I do feel that he should be back to help other people as he help me.

/S/ Phillip Barnes

(handwritten)

To whom it may concern

I had Mr. Graseck for my case. I know he defended me, to the best of his ability.

/S/ Austin Piazza

Defendants' Exhibit EE

(handwritten)

/12/72

I testify that I spoke to a former client of Arthur Graseck. He asked not to have his name used because he has a case coming up that he is afraid will be affected by any action he takes or statements he makes. He did state that he felt Mr. Graseck did a good job for him.

/S/ Sue Wasserman

Witness:
Helen Ackley

Defendants' Exhibit EE

(handwritten)

To who it may concern;

I have been very satisfied with the help and guidance that I received when I had Mr. Gresheck representing me as my attorney on more than one occasion in Happague court.

I cannot undersand why he has been fired when he was doing a really great service to the people other than myself that could not afford their own attorney and the way he went out of his way to help and understant them and their problems.

Sincerely yours,

/S/Glen Toth

Defendants' Exhibit EE

HOME IMPROVEMENTS By (printed)
TAYLOR CONST. CO.
1334 Washington Ave.
West Islip, N. Y. 11795
Phone: JU7-5713

(handwritten)
To Whom it may concern:

If Mr. Grassic has indeed been fired, the Legal Aid Society has lost the only member who I met personally) who cared enough to try to help the poor people of this county get the justice they deserve.

I feel a great injustice has been done to this man. He helped my son when we were misled by others. He feels a true sense of responsibility to his people and defends them to the best of his ability. It is rare that we find this honesty and dedication in our system today. I feel only gratitute to this man. Anything I can do further to help him, I will gladly do.

Sincerely,

/S/Mrs. Judith Laznowsky
1334 Washington Ave
West Islip, N.Y.

Defendants' Exhibit EE (printed)

May 12, 1972

To Whom it may concern;

I Rev. Mattie Lee Jones and Mr. Willie Jones, my Husband stands in behalf of MR. ARTHUR GRASECK, to testify to the true fact that he is one of the best Legal-Aid lawers there is he fought for us when we didn't think that we had a charge because, we throught that all Legial Aid lawers fought only for the State and the Rich MR. GRASECK fought for the state when he saw suciffient to fight for the state and fought for the Rich when he saw suciffient to fought for them, but meanwhile he didn't forget to do his best for the poor people eigther he only wanted to know the true fact and nothing else but the true fact and that what he deal with we need more and more lawers like MR. GRASECK because he is cocen about his client and that more than I can say about any other lawer.
May God Bless and be with him.

/S/ Rev. Mattie Lee Jones.
Mr. Willie Jones.

Witness: Sue Wasserman-
Charles Powell

Defendants' Exhibit EE

Arther Graseck who represented me on March 1972 on the charges of criminal poss. of hupo ins. in my ipinunion he helped far more than any previecs lawyers ive ever had. He just seems to care about the rights of the people, junkies etc. he didn't act as though I was just another case, he seemed to take a interest especially for my rights as I knew hardly anything, about the law. Ive told Mr. Grasack of many times of police bruttally and he wanted to help end this kind of thing that goes on noticed but I was scared of repriseles from the police.

All of the above is true and I hope justise keeps, to rights of the people and especially Mr. Grossack who "i" say rellaely gives a damn and cares, not just for the rich but the less unfornate, who cant help to relly on the legal aid there should Many more like him. Good luck PEACE for all

/S/ Ronald Thomas Hyne
Nov. 12, 1972

Witness:
John C. Bouse
Nov. 12-1972

Defendants' Exhibit EE

(handwritten)

To Whom it May Concern

I think Mr. Graseck is or was a very good and intelligence lawyer. And I was very satisfied with him and his concern with my sons case. He did a very good job I think and any time I would need a lawyer I will not heistate to call on him at all.

/S/ Alice Plowden

Defendants' Exhibit EE

(handwritten)

To: Board of Directors
Suffolk County Legal Aid Society

During my tenure with the Suffolk County Legal Aid Society I have grown to like and respect Arthur Grascek. I have found Arthur to be a hardworking, perservering individual dedicated to the service of his client. He has an imaginative and innovative approach to the defense of a client. While some criticize the defense tactics of Mr. Grascek, none criticize his singlemindedness of purpose or unyielding dedication. These same tactics, criticized by some, are appreciated and welcomed by those who believe that a defendant is entitled to the best possible defense. Arthur Grascek always does his personal best for a client.

The fact that Arthur Grascek is able and competent in the defense of a client has never been disputed. Arthur is knowledgeable in the law. He transmitted much of this to me in our brief association together. Arthur is also knowledgeable about his clients. He is able to establish a good rapport with the client; one that aids the preparation and defense of any case. What may be more important is that the clients believed in Arthur. To the poor and indigent

stratas of our society it is vital that their lawyer cares about them. These people are bandied about by other institutions in the community. They find in Legal Aid, an institution ready to service their needs. No patronization, no favor, no snobbery. They come to Legal Aid in need of the skill and knowledge that can make the difference between freedom and incarceration. Men like Arthur Grascek can be the difference.

I am informed that Arthur Grascek is being faulted because he gave a pen to a prisoner in the lock-up facility. This is an indiscretion that has been committed by several members of the Society. While not demonstrable of the best judgment, it was always done to further the defense of the client.

I must conclude by saying that the loss of Arthur Grascek's abilities and influences has been felt by attorneys and clients alike. I believe that Arthur Grascek can be a productive and valuable member of any organization to which he directs his energies.

/S/ David Besso